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February 17, 2004

The Honorable Robert G. Card
Under Secretary
U.S. Department of Energy
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1000 Independence Avenue, SW
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President

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Executive Director

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Executive Director
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Dear Under Secretary Card:

RE: Proposed §1605(b) Guidelines

I am pleased to submit the comments of the Business Roundtable on the Department of Energy's proposed general guidelines for voluntary greenhouse gas (GHG) reporting under Section 1605(b) of the Energy Policy Act. The Roundtable is an association of chief executive officers of leading U.S. corporations with a combined workforce of more than 10 million employees in the United States.

The proposed guidelines are an outgrowth of President Bush's goal of reducing the GHG intensity of the U.S. economy by 18% by 2012. The Business Roundtable strongly supports this goal. As the President emphasized, voluntary, cost-effective measures to reduce GHG intensity by reducing, avoiding, sequestering or offsetting GHG emissions are superior to costly government mandates. To encourage such measures, the Roundtable developed Climate RESOLVE, an initiative to demonstrate CEO-level leadership in expanding business participation in voluntary GHG management programs. The ultimate goal of Climate RESOLVE is 100 percent participation by members in such programs.

The Roundtable also supports the President's commitment to improving the §1605(b) GHG Registry in order to provide a "high level of confidence" in the voluntary actions taken by industry and "promote the identification and expansion of innovative and effective ways to reduce greenhouse gases." Measuring emission reduction progress and reporting results to government and the public are vital to assure that industry's efforts are recognized and credited toward national emission targets. The Roundtable has encouraged companies participating in Climate RESOLVE to report to the §1605(b) Registry and will continue to do so.

The Honorable Robert G. Card

February 17, 2004

Page 2

In the Roundtable's judgment, the proposed DOE guidelines take important and positive strides toward an improved GHG Registry; we applaud the hard work and careful analysis reflected in DOE's proposal. Our enclosed comments recommend a number of changes in the proposed guidelines that will enhance the scope and effectiveness of the §1605(b) Registry.

We look forward to meeting with you and your staff to discuss our views on the DOE proposal, and we intend to remain constructively engaged in this significant Administration initiative.

If you have questions or comments about the position of the Business Roundtable, do not hesitate to call Dale Heydlauff of American Electric Power at (614) 716-1280 or Marian Hopkins of the Business Roundtable at (202) 872-1260.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J. Castellani', with a stylized, cursive flourish extending to the right.

John J. Castellani

Enclosure

cc: Mark Frederichs

COMMENTS OF THE BUSINESS ROUNDTABLE ON THE PROPOSED DEPARTMENT OF ENERGY GUIDELINES FOR REPORTING TO THE §1605(b) GREENHOUSE GAS REGISTRY

Introduction: Business Roundtable's Perspective on the §1605(b) GHG Registry

On December 5, 2003, the Department of Energy (DOE) proposed general guidelines for voluntary greenhouse gas (GHG) reporting under Section 1605(b) of the Energy Policy Act. 68 Federal Register 68204. The Business Roundtable is pleased to submit these comments on the proposed DOE guidelines. The Business Roundtable is the association of chief executive officers of leading U.S. corporations with a combined workforce of more than 10 million employees in the United States. The Roundtable is committed to advocating public policies that foster vigorous economic growth, a dynamic global economy, and a well-trained and productive U.S. workforce essential for future competitiveness.

The proposed guidelines are an outgrowth of the President's February 14, 2002 directive which announced a goal of reducing the GHG intensity of the U.S. economy by 18% by 2012. As the President emphasized, voluntary, cost-effective measures to reduce GHG intensity by reducing, avoiding, sequestering or offsetting GHG emissions are superior to costly government mandates. Thus, the President "challenged American businesses to make specific commitments to improving the greenhouse intensity of their operations and to reduce emissions."

In response to the President's challenge, the Business Roundtable developed Climate RESOLVE, an initiative to demonstrate CEO-level leadership in expanding business participation in voluntary GHG management programs. Climate RESOLVE is based on a recognition that, because emissions from any individual company represent a small fraction of total GHG emissions, every company in every sector must take effective action to meet the President's economy-wide targets for reducing GHG intensity. That is why the ultimate goal of Climate RESOLVE is *100 percent participation by Business Roundtable members in voluntary GHG management programs*.

Climate RESOLVE was announced at a cabinet-level event on February 12, 2003 hosted by DOE Secretary Abraham. In the ensuing year, Climate RESOLVE has made significant progress. The Business Roundtable has sponsored two workshops bringing together company experts, government officials and environmental groups to discuss strategies and programs for reducing, avoiding, sequestering or offsetting GHG emissions. The Business Roundtable has also launched an outreach and education program to provide our members with the tools to develop and implement successful GHG management programs. As a result of these efforts, a large and growing number of Roundtable members are participating in Climate RESOLVE.

The Administration is working directly -- through CLIMATE VISION, Climate Leaders and other programs -- with many sectors and individual companies to implement voluntary GHG emission management initiatives. Climate RESOLVE is intended to build on and complement these programs, in which many Roundtable members are separately participating.

The President's 2002 directive called for improvements in the §1605(b) GHG Registry in order to provide a "high level of confidence" in the voluntary actions taken by industry and "promote the identification and expansion of innovative and effective ways to reduce greenhouse gases." The Business Roundtable supports these goals. Measuring emission reduction progress and reporting results to government and the public are vital to assure that industry's efforts are recognized and credited toward national emission targets. The Roundtable has encouraged companies participating in Climate RESOLVE to report to the §1605(b) Registry and will continue to do so.

From the Business Roundtable's perspective, the revised §1605(b) guidelines should seek to achieve several policy objectives:

- Encourage a wide range of entities from all sectors of the economy to undertake voluntary GHG actions to reduce, avoid, sequester or offset GHG emissions.
- Encourage broad participation in §1605(b) reporting in order to track these voluntary actions and enable companies to benchmark their programs against those of their peers.
- Focus industry efforts on achieving the President's 18% target for reducing GHG intensity and provide a tool for measuring progress toward that target.
- Assure that reports of voluntary action are accurate and reliable and that the §1605(b) data-base is transparent to business and the public while avoiding unnecessary reporting and paperwork burdens.
- Establish a credible system for documenting GHG reductions.
- Provide recognition and encouragement for U.S. companies to undertake GHG reduction projects beyond U.S. borders where such projects are beneficial and cost-effective.

In the Roundtable's judgment, the proposed DOE guidelines take important and positive strides toward these goals; we applaud the hard work and careful analysis reflected in DOE's proposal. We are concerned, however, by the complexity and rigidity of certain aspects of the DOE proposal and recommend several improvements below that will enhance the scope and effectiveness of the §1605(b) Registry.

I. Relationship to Other GHG Registries

Congress envisioned that the §1605(b) Registry would function as the single national repository for information about voluntary actions to reduce, avoid, offset or sequester GHG emissions. This goal, however, is being undermined by the proliferation of other GHG inventory and reporting programs at the state and local levels and within the NGO community. Indeed, even within the federal family, there is a lack of uniformity across GHG reduction initiatives on how emissions should be inventoried and reported. The absence of uniform guidelines for conducting inventories and reporting reductions is creating confusion and adding to the burdens of participating in voluntary initiatives. We recognize that there is no legal basis on which DOE could prevent states, localities or NGOs from developing their own GHG Registries. However, as DOE is now doing, it should affirmatively reach out to these entities to explain the §1605(b) program, seek input on its design and implementation, promote compatible guidelines for inventorying and reporting emission reductions, and encourage other registries to report

information under §1605(b). Similar efforts to promote uniformity in inventorying and reporting emissions are essential within the federal government.

II. Definition of Entity

The scope of reporting responsibilities under the §1605(b) guidelines is critically dependent on how DOE defines the term “entity” since emission inventories and net reduction demonstrations must be performed on an entity-wide basis.

Proposed §300.3 of the guidelines provides that “entities” eligible to register emission reductions must be “legally distinct businesses, institutions, organizations or households.” Thus, the distinctiveness of an entity would turn on whether it has a separate legal identity. As DOE states, “a legally-distinct company, plant or activity [could] define itself as an entity, even if it is partially- or wholly owned by another company.” DOE encourages but does not require reporters to define entities at the highest meaningful level of aggregation. The Department is also considering “more prescriptive approaches to the definition of entities, such as a requirement that the entity definitions correspond to those used for federal tax purposes.” 68 FR at 68208.

The DOE approach provides some flexibility but additional latitude to define reporting entities would be helpful. For example, in some cases, a unit of a corporation may not be separately incorporated but may nonetheless have a distinct line of business and be operated independently. It should be permissible to treat such independent business units as separate “entities” for reporting purposes regardless of their legal status. Under no circumstances should DOE define “entity” less flexibly than in its proposal. A rigid definition of entity would discourage companies from organizing their inventory and reporting efforts in the most meaningful and cost-effective manner, and this would in turn deter participation in the §1605(b) program.

DOE should clearly indicate under §300.4 that the “operational boundaries” of an entity include only those sites, operations and activities that are under the entity’s direct control. In those cases where an entity does not possess sufficient control to implement energy conservation or GHG reduction measures, the entity should be able to exclude that site, operation or activity from its entity-wide inventory.

Finally, the Business Roundtable is concerned by DOE’s proposal to require entities to certify that none of its reported reductions were double counted by any other reporting entity. 68 FR at 68209. This requirement is infeasible. It is difficult if not impossible for entities to ascertain which other entities might be reporting under §1605(b) and to contact these other entities to cross-check their reports. This requirement should be deleted.

III. Guidelines for Registering and Reporting Emission Reductions

The proposed guidelines establish a two-tier reporting system. As under the current guidelines, companies can *report* specific projects that reduce, avoid, sequester or offset emissions. In addition, companies can *register* their reductions if they inventory emissions on an entity-wide

basis, report these inventories to DOE, demonstrate a net emission reduction compared to a baseline year, and report continued reductions on a year-by-year basis.

The DOE approach offers potential benefits but several modifications are needed before a two-tier reporting system will function effectively and meet the policy objectives outlined above.

We agree that it is desirable to encourage companies to develop entity-wide reduction strategies that will contribute to the President's intensity reduction goal. Inventorying emissions on an entity-wide basis is a useful tool for examining a business's emission profile, identifying cost-effective reduction opportunities, developing metrics for tracking progress and setting entity-wide reduction goals. Thus, there is value in providing a separate reporting option to companies who conduct entity-wide inventories and implement entity-wide reductions and affording these companies special recognition.

On the other hand, not all businesses will have the capability or resources to conduct entity-wide emissions inventories. This is particularly true of companies with limited experience in managing GHG emissions or companies in sectors that are not emissions-intensive. These companies should not be discouraged from taking specific actions to reduce, avoid offset or sequester GHG emissions in the absence of an entity-wide inventory. Preserving the current project-based reporting mechanism for such companies is therefore highly desirable. DOE should underscore that reductions stemming from specific projects are no less meaningful or important than entity-wide reductions and can contribute significantly to national GHG management objectives.

Equally critical is whether DOE's system for inventorying and reporting entity-wide emissions is structured to encourage the broadest range of entity participation. In this respect, we believe that the DOE proposal is needlessly burdensome and inflexible and will deter companies from conducting entity-wide inventories. Less prescriptive requirements for the scope and rigor of GHG inventories will increase incentives for participation without reducing the utility of these inventories in planning and tracking GHG reductions. To that end, we recommend the following modifications to the proposed entity-wide registration requirements:

- Under proposed §300.7, the threshold for conducting an entity-wide emissions inventory is 10,000 tons of CO₂ equivalent; companies that emit above this level cannot register their reductions unless they perform an entity-wide inventory. This threshold is too low and would penalize many companies that are not major emitters but might nonetheless want to undertake reduction projects and register them with DOE without incurring the expense and effort of an entity-wide inventory. We recommend a small emitter threshold of 100,000 metric tons per year.
- Under §300.6 of the proposed guidelines, a reporting entity may exclude particular sources of emissions from its inventory if the total quantities emitted from these sources are *de minimis*, which DOE defines as 3 percent of total annual emissions of the entity or less than 10,000 tons CO₂ equivalent, whichever is less. For large emitters, this threshold would provide little latitude to exclude insignificant emission sources from inventory calculations and thus would greatly increase reporting burdens. For example,

for large electricity generators, 10,000 tons may be less than .1 percent of total emissions, requiring such generators to achieve an accuracy level of over 99.9% when developing inventories for registration purposes. The added time and expense necessary to account for small, dispersed emission sources will outweigh the minimal benefits from their inclusion in emission inventories. We believe a *de minimis* level of 5% of total emissions for all reporting entities would reduce reporting burdens while allowing entities to focus their resources on significant sources of GHG emissions. This approach would thereby provide incentives for entity participation without sacrificing reporting accuracy.

- Under §300.6(f), DOE proposes to require companies conducting inventories to include all six GHGs. This requirement could place unnecessary burdens on companies who emit certain gases in *de minimis* quantities but would need to expend considerable effort to inventory these emissions. Companies should be allowed to exclude one or more gases from reporting if these gases are clearly identified to DOE and are each emitted in insignificant amounts.
- Under §300.6(d), DOE proposes to require companies to include carbon storage (or sinks) in their emissions inventories. Unless companies are managing their land holdings with the explicit aim of storing GHG emissions, tracking yearly fluctuations in carbon storage as a result of land sales, purchases or development activities would be cumbersome and is unlikely to contribute to the reliability of the company's inventory. Affirmative actions to increase carbon storage through reforestation, forest management or other programs should be treated as "avoided emissions" or "offsets" depending on whether they are implemented by the reporting entity or a third-party but otherwise carbon storage on land owned or controlled by the entity should not be a mandatory component of emission inventories.
- Under §300.6(b), DOE proposes to require inventories to include emissions from mobile as well as stationary sources. The Business Roundtable agrees that where company owned fleets (vehicular, barge and airline) are non-*de minimis* emission sources, they should be included in entity-wide inventories. DOE should clarify, however, that employment-related travel by employees using publicly available modes of transportation should be considered an indirect emissions source whose inclusion in entity-wide inventories is optional. Similarly, travel using rented or leased trucks or airplanes should be excluded from mandatory reporting because these sources would be outside the entity's direct control. Finally, the appropriate tracking mechanism for emissions associated with international flights is under discussion within the International Civil Aviation Organization (ICAO), and therefore these emissions should be outside the scope of the §1605(b) Registry.

IV. Year-by-Year Reporting of Emission Reductions

The preamble to the DOE guidelines indicates that "an entity would be required to submit ongoing annual reports that document the net, cumulative emission reductions achieved relative to the entity's base year . . ." The preamble also indicates that DOE is considering a requirement

“to delete previously registered reductions if the entity did not continue to submit annual reports.” 68 FR at 68211.

We agree that sustained progress in reducing GHG intensity is essential to meet the President's 2012 intensity goal and that the guidelines should discourage entities from reporting one-time intensity reductions without maintaining or increasing these reductions in later years. Thus, entities registering reductions should submit annual reports documenting changes in emissions intensity after submission of their initial report. We also agree with DOE that some latitude should exist for short-term fluctuations in emissions based on economic or other factors provided that companies can demonstrate a net emissions reduction over a multi-year period. As DOE suggests in the preamble to the proposal, the “quantity of emissions eligible for reductions in future years” should be reduced “if the reporting entity experiences a net increase in output adjusted-emissions after beginning to report.” This approach “would preserve the recognition given to all previously registered emissions” while assuring that reductions registered in later years are adjusted to reflect intervening emission increases. 68 FR 68211.

V. Pre-2002 Actions to Reduce, Avoid, Sequester or Offset GHG Emissions

The guidelines provide that companies may not “register” reductions achieved prior to 2002, the starting year for the President’s program to reduce economy-wide GHG intensity by 18%. The Business Roundtable understands the logic of tracking emission reductions from 2002 forward so that government and business can reliably measure whether declines in GHG intensity over the subsequent ten years meet or exceed the President's goal. At the same time, some companies have implemented GHG reduction projects before 2002 to respond to governmental or public concerns about global climate change. DOE should continue to maintain projects previously reported under the §1605(b) program within the proposed database. In addition, DOE should make it clear that 2002 was selected as the starting year solely as a convenient accounting tool for the President's intensity reduction program. Finally, DOE should consider allowing companies to report data for earlier starting years if they meet the data quality requirements for accuracy, reliability and verifiability of 1605(b).

VI. Metrics for Reporting Entity-wide Emissions Reductions

The guidelines allow entities to report net emission reductions either on an “intensity” basis (i.e. emissions as a function of economic output) or on the basis of absolute reductions. However, intensity-based reporting is strongly encouraged while emission-based reporting is discouraged except where companies cannot develop a meaningful output indicator to measure intensity. 68 FR at 68211.

Intensity-based reporting is clearly justified in light of the President’s focus on intensity reductions to measure U.S. progress in improving its GHG footprint. The Business Roundtable agrees that entities should be able to register their reductions where they represent an entity-wide improvement in GHG intensity even if emissions have not declined on an absolute basis. However, emissions-based reporting is also valuable and should likewise be encouraged. Tracking absolute reductions in emissions will enable more direct performance comparisons between sectors using different metrics to measure intensity. It would also provide an additional

source of data on national emission trends. Finally, for some companies, emissions-based reporting would provide an alternative basis for demonstrating a net emission reduction where short-term factors make it difficult to demonstrate a reduction in intensity in a given year. DOE should therefore recognize the benefits of emissions-based reporting and allow entities to report on either an intensity or absolute emissions basis depending on which approach best fits their individual circumstances.

VII. Activities Counted Toward Intensity-based or Emissions-based Reductions

Under §300.8(b), DOE would preclude companies from considering plant closures or other reductions in output in determining reductions in absolute emissions for registration purposes. This restriction conflicts with the wording of §1605(b)(1)(C), which expressly permits reporting of emission reductions due to plant or facility closings. Moreover, these actions may often be part of an overall GHG mitigation strategy and have beneficial effects on an entity's GHG footprint. For example, if an older, inefficient plant is closed and production is shifted to a state-of-the-art facility, the net result will be a beneficial emission reduction. To disallow these reductions would create disincentives to modernizing the country's industrial base.

DOE would also require companies registering intensity reductions to demonstrate that "acquisitions, divestitures or changes in products have not contributed significantly to changes in emissions intensity." *Id.* Again, these actions may represent legitimate strategies for reducing emissions intensity. For example, a company that acquires a business with lower GHG intensity than its existing operations is committing its capital to beneficial changes in its GHG footprint. Similarly, a company that redesigns or replaces a product in order to lower emissions per unit of output is likewise taking affirmative steps to improve its emissions profile. These activities should be encouraged by the DOE guidelines, not discouraged.

VIII. Inclusion of Offsets in Inventories and Reduction Determinations

Offsets – *i.e.* reductions generated by another entity that has sequestered or otherwise avoided or reduced emissions – could comprise an important element of a company's GHG management strategy. As DOE notes, offsets may be particularly important where opportunities to reduce emissions within an entity's boundaries are limited or costly. The DOE proposal allows companies to include offsets in their entity-wide emission inventories and emission reduction calculations but outlines a number of restrictions on this option.

According to the preamble to the proposed guidelines, DOE intends to "permit entities to report and register emission reductions achieved by others, as long as the entity that achieved the reductions observed all the requirements applicable to reporters and the entities involved indicated that they had an agreement stipulating who would report the emission reductions." 68 FR at 68213. The preamble then poses a series of questions about the information that reporting entities should submit. According to the preamble, this information might include an Entity Statement, emissions inventory and entity-wide demonstration of reductions from the non-reporting entity as well a certification by that entity that the information reported to DOE is correct. DOE also indicates that, as an alternative to requiring this information from the

purchaser of the offset, it is considering requiring entities conducting offset projects to report directly to the GHG Registry.

The Business Roundtable is concerned that these requirements could curtail sequestration or other beneficial projects that would otherwise achieve emission reductions of value to reporting entities. We agree that there should be some assurance that, where an offset is included in an entity's determination of net emission reductions, the offset stems from a legitimate emission avoidance or reduction activity. Thus, the reporting entity should be required to certify that the offset meets the standards of accuracy and documentation applicable to project-based emission reductions under the DOE guidelines and that the entity is the lawful owner of the offset for purposes of §1605(b) reporting. We also agree that reporting entities should not take credit for offsets obtained from third-parties if the third-party's emissions increased notwithstanding the offset project. Thus, it would be appropriate for the reporting entity to certify that the third-party selling the offset in fact achieved a net emission reduction at least equal to the amount of the offset. However, it should be unnecessary for the reporting entity to submit detailed information about the offset generator's activities, including an entity statement, emission inventory and demonstration of net emission reductions since obtaining this information could be time-consuming and burdensome. In addition, where the reporting entity provides the necessary certification statements to validate the offset and is the offset's legal owner, the offset provider should not be required or even allowed to report separately to the GHG Registry.

IX. Reporting of Indirect Emissions from Energy Use

Section 300.6(c) of the proposed guidelines provides that all entity-wide inventories must include not only the entity's direct emissions but indirect emissions associated with purchased energy as well. The Business Roundtable supports this approach. Requiring reporting entities to account for the emissions resulting from energy consumption will create incentives for energy conservation programs that reduce emissions by reducing energy demand.

We have some concern, however, that companies with numerous small, highly dispersed facilities could expend considerable time and effort determining total energy consumption and such burdens could well be a disincentive to undertaking entity-wide emission inventories. This concern could be addressed by increasing the threshold for *de minimis* emissions as described above so that entities need not include minor energy-consuming facilities in their emission inventories. In addition, by recognizing that the definition of "entity" does not include sites outside a company's direct control, the guidelines would eliminate the need to account for energy consumption at leased facilities or other sites where the reporting entity does not control, and therefore cannot alter or even account for, the level of energy utilization.

Special concerns are presented where industrial companies that consume electricity have on-site energy generation facilities. We recommend that non-utility entities report separately direct emissions that are generated to produce electricity, steam, or hot or chilled water *that is exported for use by other entities*. In calculating that entity's GHG intensity, these "exported GHGs" would be excluded. In many cases, Combined Heat and Power (CHP) units on industrial sites meet energy needs with lower emissions than power purchased from the grid and therefore increased generation by these units should not be penalized by adversely affecting the CHP

owner's GHG intensity. The same approach should apply to CHP facilities that are owned or operated by utilities and likewise meet the needs to industrial energy consumers who would otherwise have excess emissions due to inefficient generation of steam or hot or chilled water.

X. Certification Statements

Under §300.10, DOE is proposing that all reports be certified by the submitter's CEO or environmental compliance officer. This approach is excessive given that reporting under §1605(b) is voluntary and is not governed by the Sarbanes-Oxley Act, which addresses mandatory reporting of financial information. Even under many environmental laws, reports to the government need only be signed by responsible corporate officials. The current §1605(b) guidelines simply specify that "the person who signs the report must be authorized to act as a representative of the reporting entity for those purposes." We see no need to adopt a more prescriptive approach in the revised guidelines. Federal law (18 U.S.C. §1001) prohibits entities from making false statements of material fact to government agencies. Since §1605(b) reporting is voluntary, this prohibition with its stiff penalties should be sufficient to deter entities from reporting false information to the GHG Registry.

XI. Third-party Verification of Reductions

DOE is proposing to encourage but not require third-party verification of emission reductions registered with DOE. 68 FR at 68210. The Business Roundtable supports this approach. Many companies may decide to seek third-party verification to enhance the market value of credits resulting from offset or reduction projects. However, there is no intrinsic need for third-party verification in all situations and such a requirement would add to the burden of registering reductions and discourage participation in the §1605(b) program.

XII. Reductions Achieved Outside the United States

DOE is seeking comments on how best to treat activities occurring outside the United States in the §1605(b) program. 68 FR at 68213.

The current §1605(b) guidelines and reporting forms do not differentiate between international and domestic emission reduction projects. Nor does the text of §1605(b) itself limit reporting to domestic projects. Moreover, many emission avoidance actions – like terrestrial sequestration projects or construction of clean energy facilities – can be conducted outside the U.S. cost-effectively and would not be pursued in the absence of investments by U.S. companies. It has consistently been U.S. government policy to encourage these investments because of their contribution to worldwide emission reduction efforts. While the President's program to reduce the emissions intensity of the U.S. economy is focused mainly on the domestic operations of U.S. businesses, their activities to avoid or reduce emissions outside the U.S. can usefully complement domestic measures and should receive equal recognition under §1605(b).

XIII. Linkage Between General and Technical Guidelines

DOE will be developing detailed Technical Guidelines to supplement its proposed General Guidelines. Until the details of the Technical Guidelines are made available, it is difficult to evaluate and comment fully on the proposed General Guidelines since the two are closely intertwined and the Technical Guidelines will clarify how many aspects of the General Guidelines will be interpreted and applied. Thus, DOE needs to provide further opportunities for comment on the General Guidelines once the Technical Guidelines are proposed and should finalize both sets of guidance as a single package.

XIV. Designation of the Guidelines as a Proposed Rule

DOE is designating the general guidelines as a "proposed rule" and intends to codify them in the Code of Federal Regulations (CFR) once they are finalized. DOE did not use formal rulemaking procedures for its existing §1605(b) guidelines nor does the statute suggest that such procedures are applicable. Since §1605(b) is a purely voluntary program, DOE should drop the rulemaking designation to avoid confusion and misconceptions of the guidelines' legal status.

February 17, 2004